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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

12 OSCAR MADRIGAL SENCION,	) Case No.: C 10-3108 PVT
13                                  Plaintiff, )	) <b>ORDER TO SHOW CAUSE WHY MOTION</b>
14                                  v. ) 15 SAXON MORTGAGE SERVICES, INC., ) et al., ) 16                                  Defendants. ) 17 _____ )	) <b>TO DISMISS AND MOTION TO STRIKE</b> ) <b>SHOULD NOT BE GRANTED, AT LEAST IN</b> ) <b>PART AS UNOPPOSED; AND CONTINUING</b> ) <b>HEARING TO SEPTEMBER 28, 2010</b>

18 On July 22, 2010, Defendant Saxon Mortgage Services, Inc. (“Saxon”) filed a motion to  
19 dismiss and a motion to strike. Saxon noticed the hearing for the motions for August 31, 2010.  
20 Pursuant to this court’s Civil Local Rule 7-3(a), any oppositions to these motions were due no later  
21 than August 10, 2010. Plaintiff has not filed any opposition to either of these two motions.  
22 Therefore, based on the moving papers and the file herein,

23 IT IS HEREBY ORDERED that, no later than September 14, 2010, Plaintiff shall file a brief  
24 showing cause why the motion to strike should not be granted in its entirety, and why the motion to  
25 dismiss should not be granted as to Plaintiff’s First, Third, Fourth and Fifth Causes of Action.<sup>1</sup>  
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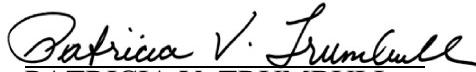
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27                                  <sup>1</sup> Defendant Saxon has not shown that dismissal of the Second Cause of Action  
28 (Negligence) is warranted. Contrary to Saxon’s argument, the law is not that a lender never owes a duty  
of care to a borrower. *See, e.g., Garcia v. Ocwen Loan Servicing, LLC*, 2010 WL 1881098, \*2-4 (May  
10, 2010) (“by asking Plaintiff to submit supporting documentation, Defendant undertook the activity  
of processing Plaintiff’s loan modification request. Having undertaken that task, it owed Plaintiff a duty

1 IT IS FURTHER ORDERED that Saxon may respond to Plaintiff's showing no later than  
2 September 21, 2010.

3 IT IS FURTHER ORDERED that the hearing on Saxon's two motions is CONTINUED to  
4 September 28, 2010.

5 Dated: 8/27/10

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7 PATRICIA V. TRUMBULL  
United States Magistrate Judge

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27 to exercise ordinary care in carrying out the task"). Construing the complaint in the light most favorable  
28 to the non-moving party, as courts must on a motion to dismiss, Plaintiff alleges that Saxon undertook  
the modification of his loan, and that Saxon was responsible for the foreclosure sale of his home at a  
time when Saxon had already approved his loan modification. Thus, the complaint adequately alleges  
facts supporting a finding of both a duty of care and a breach of that duty of care.